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October 19, 1999



Ms. Magalie Roman Salas
Secretary, Office of the Secretary
Federal Communications Commission
The Portals, TW-B-204
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Comments of Sprint Communications Company L.P. on
Bell Atlantic's Section 271 Application, CC Docket No. 99-295

Dear Ms. Salas:

Enclosed please find the original, six copies, and an electronic, read-only version of the comments of Sprint Communications Company L.P. in the above-referenced proceeding. Twelve copies are also being submitted to Janice Myles, Policy and Planning Division, Common Carrier Bureau. At the same time, paper copies are being submitted to the Department of Justice, the New York Public Service Commission, and ITS, as indicated on the attached certificate of service.

Please do not hesitate to telephone me at 202/429-4781 if you have any questions regarding this submission. Thank you.

Sincerely,

A. Renée Callahan

Enclosures



cc: Attached service list

BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

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| In the matter of | ) | |
| | ) | |
| Application by New York Telephone | ) | |
| Company (d/b/a Bell Atlantic - New | ) | CC Docket No. 99-295 |
| York), Bell Atlantic Communications, | ) | |
| Inc., NYNEX Long Distance Company, | ) | |
| and Bell Atlantic Global Networks, | ) | |
| Inc., for Authorization to Provide | ) | |
| In-Region, InterLATA Services in | ) | |
| New York | ) | |

**COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.**
**ON BELL ATLANTIC'S SECTION 271 APPLICATION**

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Attorneys for Sprint
Communications Company L.P.

Dated: October 19, 1999

# LIST OF APPENDICES

# BEFORE THE
# Federal Communications Commission
## WASHINGTON, D.C.

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| In the matter of | ) | |
| | ) | |
| Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York | ) | CC Docket No. 99-295 |

**COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.**
**ON BELL ATLANTIC'S SECTION 271 APPLICATION**

Sprint Communications Company L.P. ("Sprint") hereby files its comments regarding the above-captioned application of Bell Atlantic for authorization to provide in-region, interLATA services in New York.[1]

## I. INTRODUCTION AND SUMMARY

It is widely and justifiably recognized that the Section 271 proceedings conducted by the New York Public Service Commission ("NYPSC") have set the standard for state proceedings on in-

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[1] Application by Bell Atlantic-New York for Authorization to Provide In-Region, InterLATA Services in New York, CC Docket No. 99-295 (Sept. 29, 1999) ("Application").

region, interLATA entry.[2] The NYPSC has been effective because it has insisted that Bell Atlantic prove its case on the merits. Notwithstanding substantial political pressure to make premature findings, the NYPSC took on the role of an advocate for consumers and the competitive process. The most important aspect of its advocacy was the retention of KPMG Peat Marwick to perform a "military style," test until you pass, approach to reviewing Bell Atlantic's operations support systems ("OSS"). The results of that third-party testing process as well as the NYPSC's perseverance in pursuing checklist compliance more broadly are evident in the record in this proceeding. Bell Atlantic has reached a much higher level of checklist compliance than any of the BOCs that have filed Section 271 applications with the FCC thus far.

But notwithstanding this obvious progress, Sprint remains concerned that it is still unable to obtain the inputs it needs from Bell Atlantic on terms and conditions that allow for efficient entry into the New York local market. Sprint's entry plans are based largely on its Integrated On-demand Network or "ION," which allows customers to transmit all of their communications services -- including multiple traditional voice

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[2] See generally Petition of New York Telephone Co. for Approval of its SGAT, Case No. 97-C-0271 (NYPSC). Unless otherwise indicated, all materials cited in these comments are contained in the NYPSC's Section 271 record.

calls (i.e., local, local toll and long distance), data, and broadband Internet access -- simultaneously over a single loop. Sprint ION will transmit all of this traffic in the asynchronous transfer mode ("ATM") data format from the customer premises through the Sprint network.

In order to provision Sprint ION, Sprint requires the following inputs that Bell Atlantic does not provide in compliance with the Section 271 checklist requirements: Carrier Serving Area ("CSA") industry-compliant xDSL loops (including HDSL2); cooperative testing to ensure that such loops are CSA-compliant; electronic, real-time access to relevant loop qualification data (including presence of interferers) and other necessary OSS functionalities. These are important checklist compliance issues that deserve the Commission's close attention. Sprint is also aware that other CLECs have found that the manner in which Bell Atlantic provides checklist items, especially access to its OSS, is still not checklist compliant. Sprint understands that Bell Atlantic has stated that it can bring itself into compliance within a short period of time, and Sprint welcomes that commitment.

In addition to addressing checklist issues, the public interest requires focus on establishing adequate measures that will protect against backsliding. While the NYPSC has taken advantage of Bell Atlantic's incentive to cooperate as a condition of obtaining Section 271 approval, once such approval

is obtained, Bell Atlantic's incentive to cooperate will obviously largely disappear. In its recent interconnection agreement negotiations with Bell Atlantic, Sprint learned first hand that Bell Atlantic could well change once it has little incentive to cooperate with its competitors. In those negotiations, Bell Atlantic has taken several positions that appear to have no rationale except to raise Sprint's costs. Such behavior must be corrected prior to Section 271 approval, but also deterred from recurring post-271 approval. Thus, the Commission must ensure that Bell Atlantic is subject to comprehensive performance reporting requirements and automatic and sufficient penalties in the event that Bell Atlantic fails to meet the relevant performance benchmarks or parity standards.

The diligence of the NYPSC would be best recognized and rewarded by insisting here that Bell Atlantic's obligations be fully met prior to interLATA entry. It is precisely because Bell Atlantic's application so far exceeds prior 271 applications that the FCC should make sure the full set of prerequisites for 271 approval be met. Requiring Bell Atlantic to first correct the deficiencies that remain will ensure that the public and private investment that has brought us to this point will not be sacrificed. Also, New York has understandably become the benchmark for many other states to follow, and the Commission must make sure that it does not undermine New York's high standards by accepting something less than full Section 271

compliance. Sprint welcomes the day when existing artificial monopoly advantages can finally disappear, and competition on the merits can begin. Given Bell Atlantic's commitments to correct these problems in the near future, that day should soon arrive.

## II. COMPETITIVE CHECKLIST

The pleadings filed by CLECs in this proceeding will no doubt include discussions of many important concerns that CLECs have with Bell Atlantic's checklist compliance. In the following discussion, Sprint addresses only checklist items that it needs to provision Sprint ION.

### A. Checklist Item 1 -- Interconnection

Section 271 mandates that BOCs provide nondiscriminatory interconnection consistent with the requirements of Sections 251(c)(2) and 252(d)(1). 47 U.S.C. § 271(c)(2)(B)(i). This obligation requires Bell Atlantic to provide CLECs nondiscriminatory interconnection with Bell Atlantic's network at any technically feasible point "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Id. § 251(c)(2).

Moreover, in order to satisfy Section 271, incumbent LECs "must provide interconnection to a competitor in a manner that is no less efficient than the way in which the incumbent LEC

provides the comparable function to itself."[3] Further, the FCC has held that ILECs cannot dictate the point or points at which CLECs interconnect with the incumbents' networks, but rather that CLECs can "select the points in an incumbent LEC's network" where the CLECs will interconnect.[4] Absent technical infeasibility, Sprint thus may choose where to interconnect with Bell Atlantic's network.[5]

In recent interconnection negotiations, Bell Atlantic has insisted that Sprint establish multiple interconnection points with Bell Atlantic's network.[6] Bell Atlantic has offered no evidence that the more efficient interconnection arrangement

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[3] Application of BellSouth Corp. for Provision of In-Region, InterLATA Services in Louisiana, 13 FCC Rcd. 20599, ¶ 64 (1998) ("Louisiana II Order").

[4] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 209 (1996) ("Local Competition Order"); see also id. ¶ 220 n.464.

[5] Id. ¶ 198; see also 47 C.F.R. § 51.305(e); U S W. Communications v. MFS Intelenet, Inc., No. 98-35146, 1999 WL 799082, at *9 (9th Cir. Oct. 8, 1999) (upholding right of MFS to select its point(s) of interconnection with U S West's network).

[6] The negotiations failed to result in a final, complete interconnection agreement, for reasons described throughout this pleading. Sprint filed a petition for arbitration with the NYPSC last week. See Petition of Sprint Communications Co. L.P. for Arbitration of Interconnection Rates, Terms, Conditions & Related Arrangements with Bell Atlantic-New York, Case No. 99-C-1389, Petition for Arbitration (NYPSC Oct. 12, 1999) ("Petition for Arbitration"). The relevant affidavits appended to that petition are attached hereto as Appendices 1 (Hagen Affidavit) and 2 (Smith Affidavit).

requested by Sprint is technically infeasible. As Sprint manager Mark Hagen explains, Bell Atlantic's proposal -- the so-called geographically relevant interconnection point ("GRIP") proposal -- would require Sprint to establish multiple interconnection points within 25 miles of Bell Atlantic's rate centers. See Hagen Aff. ¶ 3 (attached as Appendix 1). Mr. Hagen also explains that such a requirement would essentially obligate Sprint to build a parallel network to transport calls. Id.[7]

Bell Atlantic's position violates its obligation to permit each CLEC to "select the points in an incumbent LEC's network" where the CLEC wishes to interconnect. Moreover, the NYPSC has already rejected Bell Atlantic's GRIP proposal.[8] Nevertheless, Bell Atlantic continues to refuse to honor the terms of the NYPSC's ruling, and instead insists on including terms that were rejected by the NYPSC in the parties' interconnection agreement. In so doing, Bell Atlantic has violated the Section 271(c)(2)(B)(i) duty to provide interconnection in accordance

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[7] Moreover, as noted, Bell Atlantic cannot legally require Sprint to build multiple interconnection points solely to reduce Bell Atlantic's reciprocal compensation and transport charges. Indeed, to the extent those concerns are valid, the NYPSC has already adopted a solution (its 3:1 reciprocal compensation ratio) to address Bell Atlantic's alleged traffic imbalances. Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation, Case No. 99-C-0529, *Opinion and Order Concerning Reciprocal Compensation* at 59-60 (NYPSC Aug. 26, 1999).

[8] Id. at 62-64 (rejecting GRIPs-type remedy).

with Sections 251(c)(2) and 252(d)(1). Bell Atlantic cannot demonstrate compliance with these requirements until it permits CLECs to decide where they interconnect (subject of course to technical feasibility). This problem is easily rectified by Bell Atlantic correcting its unlawful position.

### B. Checklist Item 2 -- Access to UNEs

Section 271 requires nondiscriminatory access to UNEs under Sections 251(c)(3) and 252(d)(1). 47 U.S.C. § 271(c)(2)(B)(ii). Bell Atlantic is not meeting this requirement for several UNEs that are crucial to Sprint ION.

#### 1. xDSL Loops

Over three years ago in the Local Competition proceeding, the Commission defined a "loop" very broadly as "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises," and required ILECs to provide local loops on an unbundled basis to requesting carriers. Local Competition Order ¶¶ 377, 380. In the Louisiana II Order, the Commission explained that, absent technical infeasibility, a BOC must provide xDSL-capable loops, even if the BOC must first condition those loops to enable CLECs to provide services that the incumbent does not currently provide over those loops. Louisiana II Order ¶ 187. This is fully consistent with the Local Competition Order, which requires incumbent LECs to provide local loops on an unbundled basis, including "two-wire and four-wire

loops that are conditioned to transmit the digital signals needed to provide services such as [xDSL]."[9]

During recent interconnection negotiations, Sprint requested that Bell Atlantic provide several types of these digital loops, including CSA-compliant HDSL2,[10] ADSL, HDSL, IDSL, and SDSL. Smith Aff. ¶¶ 10-11 (attached as Appendix 2). All of these loops conform to established industry standards. Bell Atlantic has nevertheless refused to provide them.[11]

Rather than committing itself to comply with industry standards, Bell Atlantic has attempted to incorporate its own proprietary standard, BA TR 72575, Issue 2, which Bell Atlantic has the sole and unilateral discretion to amend. Id. ¶ 10. Bell Atlantic has further refused to provide HDSL2, instead insisting that Sprint utilize a "Digital Design Loop" ("DDL") or the agreement's bona fide request ("BFR") process. Id. ¶ 11. But

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[9] Local Competition Order ¶ 380; see also Deployment of Wireline Services Offering Advanced Telecommunications Capability, 13 FCC Rcd. 24011, ¶ 11 (1998) ("all incumbent LECs must provide requesting telecommunications carriers with unbundled loops capable of transporting high-speed digital signals").

[10] "HDSL2" refers to a single 2-wire, non-loaded, twisted copper pair that meets the CSA design criteria. HDSL2 complies with the power spectral density mask and dc line power limits referenced in T1E1.4/99-006R5. Smith Aff. ¶ 11.

[11] While Sprint believes that Bell Atlantic complies with CSA standards, Bell Atlantic will not contractually commit to these standards.

Sprint cannot deploy Sprint ION using Bell Atlantic's DDL. Id. Moreover, Bell Atlantic's proposed BFR process is cumbersome, time-consuming and often fails to produce the desired results. By failing to cooperate in the provision of xDSL-capable loops in this manner, Bell Atlantic has violated its Section 271(c)(2)(B)(ii) obligation to provide unbundled loops conditioned to support xDSL in accordance with Sections 251(c)(3) and 252(d)(1).[12] Again, Bell Atlantic can easily correct this problem.

### 2. Loop Qualification Database/ xDSL OSS/Cooperative Testing

As noted, Bell Atlantic must provide access to UNEs on terms that are just and reasonable, consistent with Sections 251(c)(3) and 252(d)(1). 47 U.S.C. § 271(c)(2)(B)(ii). The Commission has held that the Section 251(c)(3) duty to provide access to UNEs on "just" and "reasonable" terms and conditions "encompasses more than the obligation to treat carriers equally." Local Competition Order ¶ 315. Rather, it requires the incumbent to provide UNEs "under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete." Id. Moreover, "incumbent LECs may be required to provision a

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[12] Covad and other "data CLECs" have also experienced problems with Bell Atlantic's provisioning of xDSL. See, e.g., Tr. at 3669-76, 3740-41, 3796, 3801-08, 3831; ACI 8/17/99 Br. at 3-12; Covad 8/17/99 Br. at 6-14; NorthPoint 8/17/99 Br. at 3-7.

particular element in different ways, depending on the service a requesting carrier seeks to offer." Id. ¶ 297.

Loop pre-qualification and qualification, cooperative testing, and loop provisioning processes are all critical to ensure that network elements are functioning properly and consistently with national standards, and that Sprint is receiving nondiscriminatory access to loops that are equal in quality to loops that Bell Atlantic provides to its retail customers, thus affording Sprint a "meaningful opportunity to compete." In each of these areas, Bell Atlantic's wholesale service performance requires improvement.

First, one of the key issues for Sprint ION is determining where the service can be provisioned and at what cost. For any loop, the answer to that equation depends on several factors about which only the ILEC has information. Typically, this information resides in the incumbent's loop information database. As Sprint manager Bryant Smith explains in his affidavit, Bell Atlantic's loop information database was designed to support its unique retail ADSL offering rather than upon industry standards.[13] As a result, the database reports only whether a

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[13] Smith Aff. ¶ 18. Specifically, Bell Atlantic's database fails to comply with the industry's CSA loop specifications. Id. ¶ 6. Those specifications require Bell Atlantic to report xDSL "service factors such as non-loaded cable, gauge size, . . . bridge tap restrictions" and the presence of DLCs. Id. ¶¶ 6, 18. These factors affect a carrier's ability to deploy xDSL (and therefore Sprint ION). Id. ¶¶ 18-19.

loop is ADSL-capable or its length. Id. ¶ 18. Yet one of the principal reasons for offering service through UNEs (rather than resale) "is that carriers using solely unbundled elements . . . will have greater opportunities to offer services that are different from those offered by incumbents." Local Competition Order ¶ 332. While facially nondiscriminatory, Bell Atlantic's database -- which is limited both in terms of the offering (ADSL only) and the geographic scope[14] -- fails to give CLECs a meaningful opportunity to compete and thus does not satisfy Section 271(c)(2)(B)(ii)'s "just" and "reasonable" requirements. As it currently exists, the limited access to Bell Atlantic's loop information prohibits CLECs from offering innovative xDSL products and from competing for customers served by central offices not included in the database. To enable CLECs to develop their own offerings and to ensure that they are able to take full advantage of the flexibility of a UNE entry strategy, Bell Atlantic must be required to provide loop information that supports all types of xDSL.

Second, if Sprint is to have a realistic opportunity to provide commercially viable Sprint ION service, it is essential

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[14] Bell Atlantic has committed to survey 93% of its New York central offices that have pending or completed collocation orders. Application at 21. Apparently, as with the current iteration of the database, Bell Atlantic will divulge only the length of the loop (including bridge taps) or whether it is ADSL-capable. See id.

that it be able to determine whether the facilities to a particular end-user premises are CSA-compliant by using the EDI electronic interfaces. Smith Aff. ¶ 20. These application-to-application interfaces are necessary for the large-scale deployment of any service, including xDSL services needed for Sprint ION.[15] Id. As noted, while Sprint believes that Bell Atlantic's loops are CSA-compliant, Bell Atlantic has failed to provide CSA-compliant pre-qualification responses, which are necessary for Sprint's successful deployment of Sprint ION. Id.

Third, Sprint ION's future success is also dependent upon the smooth and efficient installation of Bell Atlantic, CSA-compliant loops to customers' premises. Id. ¶ 7. To make installation more efficient, Sprint has requested that Bell Atlantic perform cooperative testing on each xDSL line installed. This cooperative testing should occur at the same time that the Bell Atlantic technician provisions the line, and would thus potentially avoid additional technician dispatches in cases where the loop is not CSA-compliant. Id. ¶¶ 7-8. Repeated and multiple dispatches are costly for the industry and inconvenient

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[15] KPMG's informal evaluation of Bell Atlantic's provisioning of xDSL for Covad uncovered numerous installation problems, including lack of dial tone testing and failure to perform pre-work. Tr. at 3669-76. Resolution of these problems would require Covad to make numerous calls to Bell Atlantic's help desk and to submit multiple trouble tickets. Tr. at 3673. ACI, whose entry strategy is also based on xDSL, experienced similar problems. Tr. at 3831; see also ACI 8/17/99 Br. at 5-6.

for end-users that must be present to allow for interior access. Id. ¶ 8. More importantly, cooperative testing helps ensure that good service is provided the first time and that Sprint and Bell Atlantic meet their customers' high expectations. Id.

Thus, in order to fulfill its Section 271(c)(2)(B)(ii) obligation to provide xDSL-capable loops in accordance with the requirements of Sections 251(c)(3) and 252(d)(1), Bell Atlantic must provide real-time electronic access to its xDSL-related OSS and associated databases for pre-ordering, loop makeup information, and its pre-qualification and qualification ordering and provisioning processes, including all of the relevant information identified above.[16] Further, Bell Atlantic should provide cooperative testing.[17] Again, there is no reason Bell Atlantic cannot do this within a relatively brief time period.

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[16] Specifically, Sprint has requested that Bell Atlantic supply information on CSA-qualified loops, including loop length and the presence of DLC equipment. Bell Atlantic should provide electronic access for pre-ordering, ordering, maintenance, repair and billing to the loop length and makeup of all loops served from central offices and remotes designated by Sprint including, but not limited to, loop lengths to the central office ("CO") from all street addresses, wire gauge, presence of load coils, repeaters and DLC equipment, lengths of bridge tap, and total availability (capacity/demand).

[17] Bell Atlantic has stated that it will agree to some form of cooperative testing in the future. However, Sprint cannot rely upon such a nonbinding promise for the provision of this critical service.

### 3. Unbundled Network Element Combinations

In AT&T v. Iowa Utilities Board, 119 S. Ct. 721, 736-38 (1999), the Supreme Court reversed the Eighth Circuit's decisions regarding combinations of network elements and reinstated Commission Rule 51.315(b), which prohibits an incumbent LEC from separating already-combined elements. 47 C.F.R. § 51.315(b). As a result of that ruling, Bell Atlantic must provide combinations or a "platform" of unbundled network elements ("UNE-P") upon request from CLECs.[18] Cf. MFS Intelenet, 1999 WL 799082, at *7 (rejecting U S West's argument that it could not be required to combine UNEs for MFS).

In its April 1998 Pre-Filing Statement ("PFS"), Bell Atlantic offered to provide a restricted version of UNE-P. However, that post-Eighth Circuit, pre-Supreme Court offering included (1) monthly "glue" charges for business lines; (2) a limitation on the central offices in which UNE-P would be available; and (3) a sunset provision of four to six years,

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[18] Rule 51.315(b) has been reinstated since January, although the issue of which network elements the Commission would require the ILECs to unbundle, and thus whether a UNE-P would even exist, was not settled until recently. Nonetheless, Bell Atlantic committed to the Chief of the Common Carrier Bureau in February that it would continue to provide the seven UNEs identified by (vacated) Rule 51.319, pending the outcome of the Commission's UNE Remand Order. Letter from E.D. Young III, Bell Atlantic, to L. Strickling, Chief, FCC Common Carrier Bureau, of 2/8/99, at 1. Thus, Bell Atlantic has had an ongoing obligation to provide UNE-P in accordance with the law and its public commitments.

depending on the offering. Prohoniak Decl. ¶¶ 11-12 (attached as Appendix 3); see also Bell Atlantic 4/6/98 PFS at 8-10. As Sprint director Kenneth Prohoniak explains, Bell Atlantic's four and six year sunset provisions eliminate the UNE-P as the basis for a viable entry strategy. Prohoniak Decl. ¶ 14. Moreover, Bell Atlantic's exclusion of UNE-P for business customers in those COs with two or more collocators is anticompetitive given the problems that CLECs have experienced in obtaining collocation space in New York City. Id. ¶ 15. This problem is exacerbated by Bell Atlantic's poor record of providing CLECs functionally adequate collocation facilities.[19]

Bell Atlantic has made some progress on this issue, as it appears to have recognized that it can no longer collect a "glue" charge for UNE-P.[20] At the same time, as with other areas, more work is needed before Bell Atlantic's UNE-P offering can be held in compliance. First, Bell Atlantic should be prohibited from unilaterally limiting the COs from which UNE-P will be offered,

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19 See, e.g., Covad Fogarty 4/8/99 Aff. at 5-6 (of the 76 cages that Covad had accepted as of the June technical hearing on collocation, 99% had deficiencies that took weeks or months to correct). After spot checks of 10% of CLECs' cages revealed that 25-50% were deficient, Bell Atlantic committed to a 100% quality audit of each cage. ACI 8/17/99 Br. at 16.

20 See Bell Atlantic 8/17/99 Br. at 24 n.36 ("Although not legally required, BA-NY will not seek to recover the monthly additional charge for UNE-Ps permitted by the PFS."); see also Tr. at 4213 (stating Bell Atlantic "recently dropped the glue fee").

except as allowed by the FCC's UNE Remand Order.[21] See PFS at 9 n.10. Second, the sunset provision of four to six years must be excised. See id. at 9. Third, the Commission should make clear that Bell Atlantic cannot legally charge CLECs for keeping UNEs "glued" together. While Bell Atlantic appears to have recognized that these changes may be necessary to comply with existing law, see Application at 25, the Commission should clarify that this is required in order to meet the competitive checklist.[22]

**4. Operations Support Systems**

The Commission has determined that, in order to provide nondiscriminatory access to OSS, a BOC must demonstrate first that it has deployed the necessary systems and personnel to provide competing carriers with access to each OSS function, and that the BOC has adequately assisted CLECs in understanding how to implement and use all of the OSS functions available to them.[23] Although Bell Atlantic has made considerable progress in completing the work to meet these standards, it is not yet there.

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[21] See Press Release, Report No. CC 99-41, *FCC Promotes Local Telecommunications Competition* (released Sept. 15, 1999).

[22] As with other areas, other CLECs continue to experience problems obtaining access to UNE combinations. See, e.g., Tr. at 4240-41; RCN 8/17/99 Br. at 11-12; CompTel 8/17/99 Br. at 8-9.

[23] See Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd. 20543, ¶ 136 (1997) ("Michigan Order"); Application of BellSouth Corp. to Provide In-Region, InterLATA Services in South Carolina, 13 FCC Rcd. 539, ¶ 96 (1997) ("South Carolina Order").

Bell Atlantic has consistently failed to follow procedures for managing changes in its interfaces and processes to enable CLECs that rely on them an opportunity to compete on an equal footing. As a result, Bell Atlantic has not met this checklist item.

First, Bell Atlantic has changed its policy as to which versions of industry standard interfaces it will support many times in quick succession while providing little or no prior notice to CLECs. This failure to manage releases adequately has been made much more serious by the fact that Bell Atlantic does not support backward-compatible versions of the same interfaces.[24]

These deficiencies have caused serious harm to large CLECs that must rely on Bell Atlantic's interfaces and wholesale processes for local entry. Sprint, for example, has wasted resources in meeting the requirements of Bell Atlantic interface specifications that have been abruptly replaced by completely different specifications. Thus, by August 1998, Sprint thought it had finished all of the work necessary to meet Bell Atlantic's

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[24] Specifically, Bell Atlantic typically supports only one sub-version of the two most recent versions of industry standard releases. For example, Bell Atlantic will support only one sub-version of LSOG 3 (e.g., LSOG 3, sub-version 1.4) and one sub-version of LSOG 4. When a new sub-version is released (e.g., LSOG 3, sub-version 1.5), Bell Atlantic terminates the sub-version it previously supported (in this instance, LSOG 3, sub-version 1.4). Furthermore, when a new version, say LSOG 5, is released, Bell Atlantic terminates the earlier version previously supported (LSOG 3 in this example). Prohoniak Decl. ¶ 4 n.1.

Local Service Ordering Guidelines ("LSOG") based on LSOG 2, sub-version 1.3.1. See Prohoniak Decl. ¶ 4. In November 1998, however, Bell Atlantic unexpectedly released LSOG 2, sub-version 1.4. See id. Bell Atlantic's failure to support backwards-compatible software releases forced Sprint then to rewrite its business requirements in accordance with the specifications in sub-version 1.4. See id. No sooner had Sprint made progress on meeting these specifications, than Bell Atlantic in December 1998 announced, without prior notice, its decision to skip LSOG 2, sub-version 1.4 entirely in favor of sub-version 1.5. Id. ¶ 5. This announcement "caught Sprint totally off guard and once again caused Sprint to scrap its development work and market entry plans." Id. In January, Bell Atlantic decided to support the newly-adopted LSOG 3 requirements. Id. ¶ 6. After discussions with Bell Atlantic, Sprint decided to skip LSOG 2 and design its systems to meet LSOG 3. Id. But by then Bell Atlantic had decided to abandon LSOG 3 in favor of LSOG 4, which it announced would not be deployed until February or March of 2000. Id. ¶ 7. Once again, Sprint was forced to adjust its sights to the moving target. Id.

Sprint need not have wasted significant resources in building systems for standards that were later completely abandoned. If Bell Atlantic had planned its approach to the version of resale ordering interface it adopted more carefully, supported backward-compatible software and provided adequate

notice to the CLECs of its plans, the local entry process for local resale would have been vastly more efficient.

Second, Bell Atlantic has repeatedly made changes in its business rules and processes by ignoring advance notice requirements established in the NYPSC Change Control Management and by instead issuing "Flash Announcements" to notify CLECs of changes in Bell Atlantic's business rules.[25] Flash Announcements are supposed to be used only in emergency situations. See Sprint Closz 4/28/99 Aff. ¶ 12; Prohoniak Decl. ¶ 9. It is Sprint's experience, however, that Bell Atlantic uses Flash Announcements in many non-emergency situations.[26]

Bell Atlantic's misuse of the Flash Announcement process harms Sprint and other CLECs because it forces them to adjust their systems without adequate time for testing or assessing larger business ramifications for the changes. Moreover, a CLEC simply cannot attempt to serve customers where it must rely on wholesale systems and processes that change with little or no notice. Even if the CLEC has mastered all of the requirements

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[25] These Flash Announcements generally pertain to changes in business rules applicable to Bell Atlantic interfaces. They are therefore different from the problems discussed above in Bell Atlantic's approach to changing the versions and sub-versions of the interfaces themselves.

[26] Prohoniak Decl. ¶ 9. This view is further abundantly supported by the record in the state Section 271 proceeding. See, e.g., Sprint Closz 4/28/99 Aff. ¶ 12; AT&T 4/28/99 Joint Aff. ¶¶ 36-40; AT&T 7/1/99 Joint Aff. ¶¶ 15-21.

for pre-ordering and ordering service on Bell Atlantic's OSS, a surprise change in these systems prevents CLEC wholesale communications from being processed. The CLEC's customer service is degraded as a result, since existing or potential customers must wait longer for service from the CLEC while it attempts to resolve the newly discovered problem. Of course, the Bell Atlantic retail service remains unaffected because the Bell Atlantic customer representatives do not need to use the changing interfaces.

Third, Bell Atlantic has routinely failed to properly account for CLEC change requests. See Sprint Closz 4/28/99 Aff. ¶ 13. Time and again, Bell Atlantic has ignored CLEC requests. Issues raised by CLECs regarding changes under consideration are often edited out of the Change Control meeting minutes and are not even mentioned in Bell Atlantic's Change Control Management documentation. See id. As a result, the Change Control process is not collaborative, as was intended, but rather unilateral.

Because of the problems in its approach to change control management, Bell Atlantic has received failing grades from third-parties that have reviewed its performance record in this area. For example, KPMG conducted a six month review of Bell Atlantic's change management and concluded that "[d]ocumentation regarding proposed changes has not been provided to CLECs on a timely and consistent basis." KPMG Final Report at RMI1VII8. In general, KPMG therefore concluded that it was "Not Satisfied" that Bell

Atlantic had met the test requirement that it distribute documentation regarding proposed changes "on a timely basis." See id. The New York Attorney General agreed with this assessment, noting that change management is one of the "major" aspects of wholesale service where Bell Atlantic fails to provide "CLECs service as good as BA-NY provides itself." See NYAG 8/17/99 Br. at 8.[27] Clearly, Bell Atlantic must demonstrate its ability to comply fully with established change control procedures before it can meet the Section 271 standard for access to OSS. Given the proper incentives, Bell Atlantic should be able to clear up this problem in short order.

## III. IN ADDITION TO CHECKLIST COMPLIANCE, THE PUBLIC INTEREST REQUIRES THAT APPROPRIATE PERFORMANCE MEASURES AND AN EFFECTIVE ANTI-BACKSLIDING PLAN MUST BE IN PLACE.

It is evident from the record in this proceeding that the checklist components of Section 271 have, with important exceptions, been applied as Congress intended. The NYPSC has taken advantage of Bell Atlantic's strong incentive to cooperate in lowering the barriers to local entry by patiently withholding its approval until Bell Atlantic met the checklist. Yet a Section 271 applicant must not only demonstrate checklist compliance, but also that its entry into the in-region, interLATA

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[27] More generally, Bell Atlantic's failure to follow reasonable change management procedures continued to cause major problems for CLECs even as recently as late August. See MCI Sivori 8/27/99 Aff. ¶¶ 4-23; AT&T Carmody 8/30/99 Aff. ¶¶ 2-4; AT&T 4/28/99 Joint Aff. ¶ 50.

market is consistent with the public interest. See 47 U.S.C. § 271(d)(3)(C). Thus, as the Commission has recognized, its duty to evaluate whether an application is in the public interest is distinct from and independent of the remaining three preconditions to 271 relief. See Michigan Order ¶ 389.

The most important aspect of this independent analysis in New York is consideration of whether the BOC will "backslide" once the carrot of in-region entry disappears. See id. ¶¶ 393-94. Sprint's recent experience negotiating its interconnection agreement with Bell Atlantic for New York offers a somewhat ominous reminder of how Bell Atlantic may well behave once it receives Section 271 approval. During negotiations, Bell Atlantic has taken unjustified negotiating positions that are inconsistent with existing law. In addition to the issues discussed in the checklist section above, these positions include, inter alia, (1) failing to recognize Sprint's Section 252(i) "pick and choose" rights; (2) refusing to custom route and rebrand operator and directory assistance services in Sprint's name; and (3) seeking reciprocal access to UNE and collocation rights from Sprint.[28] Absent adequate measures to detect and

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[28] See Petition for Arbitration at 5-8 (MFN), 11-12 (branding of OS/DA), 18 (reciprocal access to UNEs and collocation). Each of these positions has been rejected by the FCC. See Local Competition Order ¶¶ 1314 (Section 252(i) allows CLEC to elect individual interconnection, service, or network element arrangements), 1247-48 (imposition of Section 251(c) ILEC duties on CLECs would be inconsistent with Act); Implementation of the Local Competition Provisions of the

punish backsliding behavior such as this, the Commission cannot be confident that Bell Atlantic will comply with the Section 271 requirements after in-region, interLATA approval is granted and approval of the instant Application cannot therefore comport with the public interest.

Unfortunately, the NYPSC has yet to adopt either a complete set of performance metrics (or "measures" in the FCC's parlance) or an anti-backsliding plan. While the NYPSC adopted a carrier-to-carrier order in June (addressing metrics), it left pending numerous areas of performance that the parties to the proceeding have yet to settle.[29] All relevant metrics must be developed and fully applicable before an anti-backsliding regime can function. Otherwise, backsliding will go undetected. Moreover, those metrics must include categories to track Bell Atlantic's performance in complying with the FCC's forthcoming UNE Remand Order,[30] which Bell Atlantic may be slow in implementing. In

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Telecommunications Act of 1996, 11 FCC Rcd. 19392, ¶¶ 128, 148 (1996) (absent showing of technical infeasibility, ILEC must brand OS/DA). While the Eighth Circuit overturned the FCC's decision in the Local Competition Order regarding "pick and choose," the Supreme Court reversed the Eighth Circuit and upheld the FCC's ruling in this regard. See Iowa Utils. Bd., 119 S. Ct. at 738.

[29] See generally Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Case No. 97-C-0139, *Order Establishing Permanent Rule* (NYPSC June 30, 1999). Moreover, Bell Atlantic has filed a Petition for Reconsideration of several issues in the June order. That Petition also remains pending.

[30] See infra note 21.

addition, the NYPSC recently issued a Notice of Proposed Rulemaking to consider the Performance Assurance Plan ("PAP") and Change Control Assurance Plan ("CCAP") that contain Bell Atlantic's proposed provisions to prevent backsliding.[31] Obviously, these plans must also become effective for Section 271 approval in New York to be in the public interest, subject to the fairly significant changes described herein.

Furthermore, Bell Atlantic's proposed PAP must be substantially changed to effectively prevent backsliding. Most fundamentally, the proposed PAP does not provide sufficient monetary penalties. As the FCC staff recently told SBC, the BOC's "potential liability" in such a plan, "must be high enough that an incumbent could not rationally conclude that making payments under an enforcement plan is an acceptable price to pay for hindering or blocking competition."[32] Yet, while Bell Atlantic contends that it could be subject to penalties up to

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[31] The PAP sets forth the penalties Bell Atlantic proposes to incur if its performance is inadequate as measured by the metrics that are being considered in the carrier-to-carrier proceeding. The CCAP proposes new metrics for the change control process that is used to implement and inform CLECs of software changes to Bell Atlantic's interface systems for OSS.

Bell Atlantic filed an amended PAP on September 24, 1999. Parties filed comments with the NYPSC in response to the NPRM on October 4, 1999, and Bell Atlantic filed its reply comments on October 8, 1999.

[32] Letter from L. Strickling, Chief, FCC Common Carrier Bureau, to P. Hill-Ardoin, SBC, of 9/28/99, at 2.

$259 million per year under the PAP, it will never reach that cap. This is because the PAP is a "top-down" plan in which the upper limit is divided by the various categories of metrics, each of which includes a further, separate cap.[33] Consequently, Bell Atlantic can perform terribly in one particular area that is critical to competition on a continuous basis and never come close to reaching the overall maximum penalty. For example, if Bell Atlantic denies or delays installation of interconnection trunks, the maximum penalty Bell Atlantic will incur for one year is $16.25 million.[34] Such a low penalty could easily be an "acceptable price to pay for hindering or blocking competition."

Bell Atlantic asserts that a recent amendment to the PAP permits the NYPSC to amend the penalty caps to the various categories upon 15 days' notice to Bell Atlantic, thereby alleviating the concern that there are individual caps on areas of performance.[35] However, the amendment only permits the NYPSC to make prospective modifications. As a result, the NYPSC cannot

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[33] See generally Petition of New York Telephone Co. for Approval of its SGAT; Petition filed by Bell Atlantic-New York for Approval of a PAP and CCAP, Case Nos. 97-C-0271 & 99-C-0949, *Notice of Proposed Rulemaking* (NYPSC Aug. 30, 1999) ("SGAT/PAP-CCAP Proceeding").

[34] See SGAT/PAP-CCAP Proceeding, MCI Comments at 8 (Oct. 4, 1999).

[35] See SGAT/PAP-CCAP Proceeding, Bell Atlantic Reply Comments at 6 (Oct. 8, 1999); see also id., Bell Atlantic Petition for Approval of the Amended Performance Assurance Plan at 2 & appended Amended PAP at 4 (Sept. 24, 1999).

adjust the caps during the month that Bell Atlantic's behavior is especially poor. Rather, it must give Bell Atlantic 15 days' notice before the month in which the caps are adjusted, thereby giving Bell Atlantic advanced warning that additional monies are at risk. Thus, Bell Atlantic's amendment does not resolve the problems with the individual caps.

To make the anti-backsliding measures proposed for New York sufficient, the Commission should require that either the caps on the individual metrics be eliminated or that the NYPSC may increase a cap if Bell Atlantic does not improve performance in a particular area.

Moreover, to further ensure that the penalties in the PAP are adequate to deter backsliding, the Commission should add to the financial sanctions the revocation of Bell Atlantic's right to joint market interLATA services with local and intraLATA services. Revocation of joint marketing rights as a backsliding deterrent is fully consistent with the logic of Sections 271 and 272. As Congress explained in enacting Section 271:

> Congress sought to ensure that, when the BOCs obtain authorization to provide long distance services, and thereby offer one-stop shopping, new entrants would also have the opportunity to provide a combined package of telecommunications services to consumers.[36]

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[36] AT&T Corp. v. Ameritech, 13 FCC Rcd. 21438, ¶ 39 (1998) ("BOC Joint Marketing Order"), aff'd, U S W. Communications, Inc. v. FCC, 177 F.3d 1057 (D.C. Cir. 1999).

A key aspect of the ability to offer one-stop shopping is joint marketing. Thus, prior to receiving Section 271 approval in a state, BOCs are generally prohibited from joint marketing their local service with either their Section 272 affiliates' interLATA service or another carrier's interLATA service in the state in question.[37] If Bell Atlantic were to backslide in important aspects of its wholesale service, Sprint and its other competitors' abilities to offer one-stop shopping would be reduced. The appropriate remedy for such backsliding would therefore be to prohibit Bell Atlantic from joint marketing in-region, interLATA services with its local and intraLATA services until it has demonstrated, with improved performance in its wholesale operations, that its competitors are able to compete in the provision of bundled services on a more equal footing.[38]

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[37] See 47 U.S.C. § 272(g)(2) ("[a] Bell operating company may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d)"); BOC Joint Marketing Order ¶¶ 38-52 (holding that Ameritech and U S West were prohibited under Section 271 from entering into joint marketing plans with Qwest that would effectively allow the BOCs to offer "one-stop shopping" for local and long distance services).

[38] Of course, Section 271 also contemplates the revocation of Section 271 authority entirely in extreme cases of BOC backsliding. See 47 U.S.C. § 271(d)(6)(A)(iii). This would be appropriate, for example, where CLECs are unable to jointly market local and long distance services at all.

In addition to establishing an insufficient deterrent, the proposed PAP is also ineffective in making CLECs whole who are hurt by Bell Atlantic's poor performance. Under the plan, CLECs receive bill credits, rather than actual payments, from Bell Atlantic. The result is that if any one bill is less than the credit owed, the credit is carried over until a CLEC incurs charges with Bell Atlantic. A CLEC that makes small wholesale payments to Bell Atlantic but that is the target of substantial anticompetitive behavior will not be compensated. The plan should therefore require immediate cash payments to a CLEC that suffers from sub-par performance.[39]

Furthermore, the proposed PAP contains an arbitrary weighting scheme that assumes that some performance measurements are more critical than others. Because CLECs have different business plans, a weighting scheme is not equitable to CLECs and competition in general and should be abandoned.

Nor does the proposed PAP provide the necessary incentives to ensure that Bell Atlantic's performance measurement reports are timely, complete, and accurate. Such incentives must be built into the plan.

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[39] At the same time, cash payments are unlikely to compensate a CLEC for harm to its reputation caused by poor wholesale service from Bell Atlantic. The deterrent effect of large aggregate penalties are therefore the most critical part of any backsliding regime.

Finally, the plan is not simple and self-executing, as required by the FCC, because Bell Atlantic reserves the right to adjust the results of performance measurements due to an increase in CLEC orders, among other things. These types of reservations add undefined complexity to the proposed PAP and impose delay in the restitution process, thereby adversely impacting CLECs and competition.

Bell Atlantic's proposed CCAP also contains many flaws that need to be fixed. As currently proposed, the CCAP has two components. The first component is designed to ensure that Bell Atlantic provides timely notification of interface-affecting changes, as well as advance delivery of business rules and computer specifications needed by CLECs to effectively respond to and modify their processes according to the scheduled changes. The second component is designed to ensure that software changes are implemented successfully. Bell Atlantic has up to $10 million at risk per year if it does not meet the thresholds of these two metrics. In addition, $15 million from the PAP may be applied to the CCAP if Bell Atlantic exceeds $10 million in penalties in a year.

This penalty structure should be modified. The cap for the CCAP would appear to be sufficient if set at $25 million per year. But that total amount should be in addition to and independent of the PAP penalties.

Moreover, the CCAP should, but does not, include all the relevant metrics for change management. For example, the CCAP does not include metrics measuring the time Bell Atlantic takes to notify CLECs when an interface is not working or the time it takes to resolve software problems. These and other omissions track important aspects of performance. Hence, the CCAP should include all current change control metrics. Furthermore, the CCAP should include additional metrics to measure Bell Atlantic's adherence to the commitments it has made to (1) give CLECs at least 15 business days to review and evaluate Bell Atlantic's proposal to change its OSS interfaces and processes and (2) provide Release Management Schedules to CLECs that generally identify planned OSS interface and processes changes well in advance of implementation to enable CLECs to make long-term plans for OSS management.[40]

## IV. CONCLUSION

New York's progress should be welcomed by the FCC as a benchmark for other states and BOCs. Most especially, New York has demonstrated the value of third-party testing to reveal difficulties in BOC checklist compliance. Bell Atlantic has stated it will move promptly to correct the deficiencies the New York process has disclosed, and Sprint expects that the issues it

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[40] See SGAT/PAP-CCAP Proceeding, AT&T Comments at 37-38 (Oct. 4, 1999).

has raised in its own interconnection discussions with Bell Atlantic are fixable with a few phone calls internal to the BOC. Once the problems are rectified, along with the resolution of the anti-backsliding measures discussed herein, the Commission will be able to grant Bell Atlantic interLATA authority in New York. Until such time, however, the statute mandates that such authority be withheld.

Respectfully submitted,

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